United Nations A/C.5/55/SR.46

General Assembly
Fifty-fifth session

Official Records

Distr.: General
28 March 2001

Original: English

Fifth Committee

Summary record of the 46th meeting
Held at Headquarters, New York, on Thursday, 15 March 2001, at 10 a.m.

Chairman: Mr. Rosenthal ..... (Guatemala)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. Mselle

Contents

Agenda item 116: Review of the efficiency of the administrative and financial functioning of the United Nations (*continued*)

Reports of the Office of Internal Oversight Services (*continued*)

Procurement-related arbitration

Agenda item 127: Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (*continued*)

Agenda item 128: Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (*continued*)

Agenda item 127: Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (*continued*)

Financing and conditions of service of ad litem judges

Agenda item 120: Administrative and budgetary coordination of the United Nations with the specialized agencies and the International Atomic Energy Agency (*continued*)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

01-28804 (E)

The meeting was called to order at 10.15 a.m.

Agenda item 116: Review of the efficiency of the administrative and financial functioning of the United Nations (*continued*)

Reports of the Office of Internal Oversight Services (*continued*) (A/55/746, A/55/750 and A/55/803

1. **Mr. Lenefors** (Sweden), speaking on behalf of the European Union, welcomed the findings of the report of the Office of Internal Oversight Services (OIOS) on the follow-up audit of the implementation of procurement reform (A/55/746), which showed that the systems and procedures of the Procurement Division had been significantly improved. Continued efforts should be made to improve the effectiveness of the procurement process still further.

2. The OIOS report on the inspection of the outcome of the consolidation of the three former economic and social departments into the Department of Economic and Social Affairs (A/55/750) showed that the consolidation had been a success. In the European Union's view, the new Department was absolutely fundamental to the Organization's work.

3. The OIOS report on the inspection of the consolidation of technical support services in the Department of General Assembly Affairs and Conference Services (A/55/803) showed that that rationalization exercise, undertaken in 1997 at the Secretary-General's initiative, had also been a success. The European Union supported the recommendations of OIOS, particularly in relation to the need to strengthen the cost-effective use of services in New York, Geneva and Vienna and to avoid unnecessarily extended meetings.

4. **Mr. Orr** (Canada) said that the Department of General Assembly Affairs and Conference Services played a crucial role in enabling Member States to carry out their work in the Security Council and in the General Assembly and its subsidiary bodies. The relevant report of OIOS (A/55/803) concluded that the establishment of that Department had resulted in enhanced efficiency. The report focused primarily on the Department's services in New York, even though the Department was responsible for the provision of conference services in Geneva and Vienna as well. His delegation would welcome a comparison of the major duty stations in terms of workloads, quality of service and other indicators. Paragraph 20 of the report referred to a lack of control by New York over the financial resources at the other duty stations; he wondered whether that lack of control extended to other areas as well.

5. The survey of Member States conducted by OIOS to determine their level of satisfaction with the Department's services would provide some useful baseline data. However, he was concerned about the low response rate, which could be attributed in part to problems with the design of the survey. In future, OIOS should seek input from the Permanent Missions before finalizing such surveys. He hoped that the Department would seriously consider the desire of some Member States to modernize the methods of work used in informal consultations.

6. He was concerned about the indication, in paragraph 17 of the report, that some Secretariat departments failed to submit documents electronically for translation. He asked what additional costs and delays resulted from that situation. Lastly, he noted that the Department had made only a few comments on the observations contained in the report, and asked for specific timetables for the implementation of the Office's recommendations. The Office should follow up appropriately and should do more audit work with respect to that Department, in view of its size and importance.

7. **Ms. Bentley-Anderson** (United States of America) said she regretted that the OIOS report on the Department of General Assembly Affairs and Conference Services (A/55/803) had been submitted late. The Department should immediately implement the performance appraisal system (PAS). The submission of documentation for processing in hard copy only should not be permitted; all documentation should be submitted electronically. The low rate of response to the OIOS survey of Member States could reflect either a high degree of apathy or a high degree of satisfaction; Member States should make their views known to the Department by completing future surveys. Lastly, she was pleased that the many improvements made in the Department's functioning had been noted.

8. **Mr. Nakkari** (Syrian Arab Republic) said that, in future, reports should be made available in accordance

with the six-week rule to give delegations sufficient time to consider them and formulate their views.

9. **Mr. Nair** (Under-Secretary-General for Internal Oversight Services) said that, while it was true that his Office had initially focused on Headquarters in evaluating the efficiency of the Department of General Assembly Affairs and Conference Services, the Office would subsequently extend its analysis to other duty stations and would make use of comparisons and benchmarks. He would welcome suggestions on how the Office could improve the rate of response to future surveys of Member States; the conduct of such surveys electronically was one way of enhancing efficiency. While it might not be possible to estimate accurately the additional costs incurred as a result of the failure of some departments to submit documentation electronically, he was sure that such costs were high. His Office would take steps to determine whether improvements were being made in that regard. The Secretary-General was monitoring the implementation of PAS throughout the Secretariat, and took that issue into account in his annual appraisals of all Under-Secretaries-General. Lastly, with respect to follow-up, OIOS would obtain timetables for implementation from the departments concerned, monitor the implementation of its recommendations and report any problems to the Committee.

Procurement-related arbitration (A/54/458 and A/55/829)

10. **Mr. Rashkow** (Director, General Legal Division), introducing the report of the Secretary-General on procurement-related arbitration (A/54/458), said that the report had been prepared pursuant to General Assembly resolution 53/217 and took into account the OIOS recommendations in document A/53/843, as well as the views expressed by Member States on the subject at the fifty-third session of the General Assembly. He recalled that the Assembly had requested the Secretary-General to address in the report the reasons for arbitration cases; the roles and mandates of various Secretariat structures and negotiating teams in arbitration and settlement processes; the sources of funding for arbitration awards and settlement payments; the selection of outside legal counsels and provisions to preclude conflict of interest; disciplinary action taken against staff members responsible for wrongdoing that resulted in arbitration; pending arbitration cases; and measures taken or proposed to prevent or reduce contract disputes which might lead to arbitration in the future.

11. Two further audits of procurement-related arbitration cases had been conducted since the issuance of the report in October 1999. The comments of the Administration on the first of those audits were contained in the first report of the Secretary-General on the implementation of the recommendations of the Board of Auditors on the accounts of the United Nations for the biennium ended 31 December 1999 (A/55/380), while the outcome of the second audit was presented in the report of the Board of Auditors on the expanded examination of the practices and procedures with regard to the handling of arbitration/claims cases by the United Nations Administration, which was contained in annex III to the report of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) on procurement-related arbitration (A/55/829).

12. It must be pointed out that only a handful of claims against the United Nations led to arbitration. Moreover, the cost to the Organization must be seen in the context of the total value of United Nations business. Thus, while there had been 42 claims during the period 1994-1997 with an aggregate value of $222.35 million, the total amount awarded in favour of claimants had been only $28 million. The Administration had, however, made mistakes and there was room for improvement. It therefore welcomed the input of OIOS and the Board of Auditors and was committed to implementing their recommendations.

13. **Mr. Mselle** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of ACABQ (A/55/829), said that the litigation of claims against the United Nations had been of interest to the Advisory Committee for a number of years. In order to assist it in examining the subject, it had requested the Board of Auditors to conduct a specific examination of practices and procedures for the handling of arbitration/claims cases by the United Nations Administration. The Board had submitted two reports: the first had been summarized in the report of the Board of Auditors to the General Assembly (A/55/5, paras. 182-227) and the second was contained in annex III to the report of ACABQ currently before the Fifth Committee (A/55/829). The Board was to be commended for preparing two excellent reports.

14. While the Office of Central Support Services and the Office of Legal Affairs played a central role, procurement, the award and management of contracts and the securing of professional services for litigation and arbitration concerned the Secretariat as a whole. In numerous cases, the Board had found that greater attention to the processing of contract negotiation might have minimized the risk to which the Organization had been exposed. The total cost to Member States of arbitration awards and settlement payments during the period covered by the two reports — 1994 to 1999 — had been approximately $42 million. It would be simplistic to claim that that amount was minimal in comparison with United Nations expenditures for peacekeeping operations over the same period. First, the claims in litigation for that period had not all been settled. Second, to the direct cost reported must be added the large cost of staff time and other resources devoted by the Secretariat to the processing of claims and the handling of litigation.

15. There was thus an urgent need to improve contract processing and management by the Secretariat, to enhance coordination between the Office of Legal Affairs and the Office of Central Support Services in the procurement of professional services, and to establish effective internal controls with respect to the solicitation of outside legal counsel and the negotiation of fees. If those and the other recommendations made by the Board were fully implemented, the Organization's exposure to claims and litigation would be minimized.

16. The Advisory Committee intended to follow up the issues raised in the two reports of the Board in the context of its regular review of peacekeeping operations. It had also requested that a comprehensive report on the results of the implementation of the Board's recommendations should be submitted to the General Assembly. Furthermore, in order to enhance transparency, it had requested that specific information on claims against the United Nations should be included in peacekeeping performance reports.

17. **Mr. Lozinski** (Russian Federation) said that the Fifth Committee had considered procurement-related arbitration for some five years, but had been unable to obtain clear information on such key points as the reasons for arbitration cases, the cost to the Organization, the measures taken to avoid arbitration, and the criteria for selecting legal counsel and determining their fees. With the two reports of the Board of Auditors, the report of the Secretary-General (A/54/458) and the related report of ACABQ (A/55/829), the Committee at last had a clear picture of the issue.

18. It appeared that the main reasons for arbitration cases were the lack of qualified procurement specialists in peacekeeping missions; the inadequate level of training of field staff; and the lack of coordination at Headquarters, in particular, between the Office of Legal Affairs and the Procurement Division in the formulation and management of contracts. There was also a need to improve the selection of outside legal counsel and the monitoring of the services they provided and to increase their level of remuneration.

19. The Secretariat must draw up a programme of measures to minimize arbitration in future, if not to eliminate it entirely. It was important to ensure that all relevant Secretariat departments were involved in that process and that Member States were kept informed of the measures taken.

20. **Mr. Repasch** (United States of America) expressed satisfaction that the Committee was finally in a position to see to it that the Secretariat implemented the changes necessary to ensure that procurement was carried out in a more cost-effective manner. His delegation fully endorsed the recommendations of the Board of Auditors and hoped that they would be implemented expeditiously. The Advisory Committee had requested the Board to consider the extent to which contract negotiation had minimized the Organization's exposure to claims. He would like to know what constituted an acceptable level of risk in that regard. With respect to the report of ACABQ, he asked what the processing of contract negotiation entailed (A/55/829, para. 8). While he agreed with the Advisory Committee's observation that the Administration must do everything in its power to minimize the risk to which the United Nations might be exposed, it was simply not cost-effective to eliminate risk entirely. Referring to the report of the Board of Auditors contained in annex III to the report of ACABQ, he asked what the justification was for the signing by the United Nations Children's Fund (UNICEF) of a contract for the manufacture of up to 500,000 scales.

21. **Mr. Mselle** (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that it was not for the Advisory

Committee to determine what level of risk the Organization could tolerate. As far as Member States were concerned, the cost of claims against the United Nations was significant, and every effort should be made to reduce it, provided that it was cost-effective to do so. In calling for greater attention to the processing of contract negotiation, the Advisory Committee's point had been that improvements in the formulation, negotiation, award and management of contracts — not only in the Office of Legal Affairs and the Office of Central Support Services, but also in the field, where the majority of problems arose — would minimize the potential for claims against the Organization. He noted, in that connection, that the aim was not to eliminate risk entirely. He would revert to the issue of the contract concluded by UNICEF at a later date.

22. **Mr. Rashkow** (Director, General Legal Division) said that, in determining what constituted an acceptable level of risk, there was a need to consider both the legal and policy aspects of the question. The Administration sought to identify risks and to minimize them as far as possible, and it would welcome suggestions as to how it could do so more effectively. While the recommendations contained in the most recent report of the Board of Auditors were helpful, some raised issues that would require discussion both within the Office of Legal Affairs and with other Secretariat units before they could be implemented.

Agenda item 127: Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (*continued*)

Agenda item 128: Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (*continued*)

Report of the Office of Internal Oversight Services (*continued*) (A/55/759)

23. **Mr. Lozinski** (Russian Federation) said that the issue of serious abuses at the two Tribunals was not new and, unfortunately, not a thing of the past. He therefore appreciated the report submitted by OIOS on the investigation into possible fee-splitting arrangements between defence counsel and indigent detainees at the Tribunals (A/55/759). He was concerned to note that the existence of such arrangements, particularly at the International Tribunal for the Former Yugoslavia, could not be ruled out, since that represented an unauthorized use of the funds allocated to the Tribunals and placed the Organization's limited resources in the hands of suspects/accused persons or their families. Moreover, the report indicated that fee-splitting sometimes led to unnecessary delays in proceedings because the counsel involved engaged in obstructive and dilatory tactics to generate additional fees.

24. The issue of fee-splitting was linked to many other issues related to the Tribunals' functioning. The Russian Federation welcomed the recommendations of OIOS, which proposed a wide range of corrective measures. The investigation and monitoring of the Tribunals' activities should be pursued more actively, since the effectiveness and adequacy of their current structure remained a crucial issue.

25. **Mr. Zhou** Qiangwu (China) said that he was very concerned about possible fee-splitting arrangements at the Tribunals. Since the Tribunals' establishment, the size of their budgets had increased every year; in 2001, the budget for both Tribunals amounted to some $182 million. It was hard to understand how such huge budgets could be squandered on arrangements such as those described in the OIOS report. While he appreciated the investigative work done by that Office, some parts of its report were quite vague. For example, paragraphs 71 and 72 indicated only that the existence of fee-splitting arrangements could not be ruled out. He hoped that OIOS would take further action to clarify the situation. At the same time, he called on the Tribunals themselves to enhance their efficiency, speed up the trial process and publish the results achieved as soon as possible.

26. **Ms. Nakian** (United States of America) said that, since the United States attached great importance to the Tribunals, it was seriously concerned that possible corrupt practices could undermine their credibility and effectiveness. The recommendations of OIOS should be implemented as soon as possible, and the Tribunals should act promptly to close loopholes that might allow United Nations funds to be misused. The Office should keep the issue of fee-splitting under careful review and

should report to the Committee on future developments.

27. **Mr. Nair** (Under-Secretary-General for Internal Oversight Services) said that, because the Office's investigation was still under way, the language used in its report was sometimes imprecise because no conclusive evidence had been discovered thus far. He would report back to the Committee once the investigation had been completed.

Agenda item 127: Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (*continued*) (A/55/517/Add.1, A/55/756 and A/55/806)

Financing and conditions of service of ad litem judges (A/55/517/Add.1 and A/55/756)

28. **Ms. Nakian** (United States of America) said that the report of the Advisory Committee on Administrative and Budgetary Questions (A/55/806) on the reports of the Secretary-General concerning, respectively, the proposed resource requirements for 2001 for the use of ad litem judges in the International Tribunal for the Former Yugoslavia (A/55/517/Add.1) and the conditions of service of the ad litem judges of the International Tribunal for the Former Yugoslavia (A/55/756) contained reasonable recommendations, all of which were supported by her delegation.

Agenda item 120: Administrative and budgetary coordination of the United Nations with the specialized agencies and the International Atomic Energy Agency (*continued*) (A/55/525)

29. **Mr. Orr** (Canada) said that the statistical report of the Administrative Committee on Coordination on the budgetary and financial situation of organizations of the United Nations system (A/55/525), which was submitted every two years, provided useful system-wide information. However, it appeared that, in table 1, some of the amounts indicated for the United Nations budget were gross amounts, while others were net amounts.

30. **Mr. Fareed** (Director, Office for Inter-Agency Affairs) said that he would have the tables reviewed to determine whether there were any discrepancies in the manner in which amounts were reported.

31. **Mr. Chandra** (India) said that the statistical report would be even more useful if it also gave information on the contributions made by each Member State to the funds, programmes and agencies, and on the investments made by each fund, programme and agency in individual countries. The report revealed a downward trend in the core resources of the funds, programmes and agencies; that trend must be arrested.

32. **The Chairman** suggested that the Committee should request the Secretariat to prepare a draft decision whereby the Committee would recommend that the General Assembly should take note of the report contained in document A/55/525.

33. *It was so decided.*

The meeting rose at 11.25 a.m.